

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

CASE NO. CA-C-11-84

M.D., by her next friend, Sarah R.

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Judge Janis Graham Jack

Stukenberg, et al.,

(Courtroom Deputy Lori Cayce

vs.

)(ERO Jared Marks

GREG ABBOTT, in his official capacity

)(Proceeding: Status Conference

as Governor of the State of Texas, et al.

)(Date: June 27, 2023

(Exhibit List of: COURT

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Not

Exhibit no.	Description	Marked	Offered	Objection	Admitted	Not Admitted
1	List of DFPS and HHSC Commissioners	X	X		6/27/23	
2	Defendants' Attorneys to Date	X	X		6/27/23	
3	Operations that Moved to PPM as of 3/1/23	X	X		6/27/23	
4	Operations that Completed Heightened Monitoring as of 3/1/23	X	X		6/27/23	
5	Email to monitors from Chisom dated 6/5/23	X	X		6/27/23	
6	Heightened Monitoring Compliance Considerations, Stage Progression, and Extension Framework (8 pages)	X	X	X	6/27/23	
7	Figure 80: Info Included in Heightened Monitoring Placement Request for Approved Placements of PMC Children at Heightened Monitoring Operations, Calendar Year 2022	X	X		6/27/23	

COURT'S EXHIBIT 1

DFPS Commissioners

Name	Year Appointed
Anne Heiligenstein	2011
Howard Baldwin	Oct. 2011—Appointed interim Commissioner Jan. 2012—appointed Commissioner Nov. 2012—Resigned
John Specia	2012
Henry Whitman	2016
Jaime Masters	2019
Kez Wold	Nov. 2022—appointed interim Commissioner
Stephanie Muth	2023

HHSC Commissioners

Name	Year Appointed
Tom Suehs	2011
Kyle Janek	2012
Chris Traylor	2015
Charles Smith	2016
Tommy Williams	May 2018—appointed interim Commissioner
Courtney Phillips	2018
Phil Wilson	2020—appointed Acting Commissioner
Cecile Erwin Young	2020

COURT'S EXHIBIT 2

DEFENDANTS' ATTORNEYS TO DATE

Allyson N. Ho, Gibson, Dunn & Crutcher
Savannah Catherine Silver, Gibson, Dunn & Crutcher
Prerak Shah, Gibson, Dunn & Crutcher

James Patrick Sullivan, Office of the Governor of Texas

Office of the Attorney General of the State of Texas

Thomas A. Albright
Zachary William Berg
Reynolds Brissenden
Shawn Cowles
Nathaniel Danko
Todd Lawrence Disher
Grant Dorfman
James B. Eccles
Elizabeth J. Brown Fore
Kimberly Gdula
Darren Glenn Gibson
Christopher D. Hilton
Kara Holsinger
Eric Alan Hudson
Joseph D. Hughes
Eugenia LaFontaine Krieg
Paul B. Moore
Karl E. Neudorfer
Eveanna Odean
Leif Olson
Ken Paxton
Noah Reinstein
Marc Rietvelt
Robert Salmon
John Scott, Provisional Attorney General
Laura A. Smith
Andrew Bowman Stephens
Patrick K. Sweeten
William Thomas Thompson
James C. Todd
Clayton R. Watkins
Brent Webster
Raymond Charles Winter

COURT'S EXHIBIT 3

OPERATIONS THAT MOVED TO PPM AS OF 3/1/2023

A Pathway to New Beginnings, LLC

- Number of ANE investigations opened: 6
- Number of high-weighted deficiencies cited: 0
- Number of medium-high-weighted deficiencies cited: 1
- Number of medium-weighted deficiencies cited: 1

City of Hope Missions, dba Heartsway

- Number of ANE investigations opened: 24
- Number of high-weighted deficiencies cited: 2
- Number of medium-high-weighted deficiencies cited: 4
- Number of medium-weighted deficiencies cited: 4

El Paso Center for Children

- Number of ANE investigations opened: 16
- Number of high-weighted deficiencies cited: 0
- Number of medium-high-weighted deficiencies cited: 1
- Number of medium-weighted deficiencies cited: 0

Family Link Treatment Services, CPA

- Number of ANE investigations opened: 7
- Number of high-weighted deficiencies cited: 4
- Number of medium-high-weighted deficiencies cited: 1
- Number of medium-weighted deficiencies cited: 0

- Family Link Treatment Services had one open investigation at the time it transitioned to post-plan monitoring. It did not result in a substantiated finding.

Fred & Mabel R. Parks Youth Ranch

- Number of ANE investigations opened: 2
- Number of high-weighted deficiencies cited: 0
- Number of medium-high-weighted deficiencies cited: 1
- Number of medium-weighted deficiencies cited: 0

Hands of Healing

- Number of ANE investigations opened: 8
- Number of high-weighted deficiencies cited: 1
- Number of medium-high-weighted deficiencies cited: 3
- Number of medium-weighted deficiencies cited: 2

Have Haven Child Placement Agency

- Number of ANE investigations opened: 12
- Number of high-weighted deficiencies cited: 1
- Number of medium-high-weighted deficiencies cited: 0
- Number of medium-weighted deficiencies cited: 0

High Plains Children's Home

- Number of ANE investigations opened: 12
- Number of high-weighted deficiencies cited: 2
- Number of medium-high-weighted deficiencies cited: 5
- Number of medium-weighted deficiencies cited: 0

L'Amor Village RTC

- Number of ANE investigations opened: 4
- Number of high-weighted deficiencies cited: 1
- Number of medium-high-weighted deficiencies cited: 0
- Number of medium-weighted deficiencies cited: 0

Sweeten Home for Children

- Number of ANE investigations opened: 32
- Number of high-weighted deficiencies cited: 2
- Number of medium-high-weighted deficiencies cited: 3
- Number of medium-weighted deficiencies cited: 3
- Sweeten Home for Children received a RTB finding for Exploitation on November 22, 2022, less than a month before moving to post-plan monitoring. A staff member was found to have exploited a child by using him to make illegal purchases of vape pens and other illegal substances. The staff member also asked the child to sell pills for him. The staff member told the child they were “going to make money off the high school by moving pills.” The operation moved to post-plan monitoring on December 14, 2022.

The Gladney Center for Adoption

- Number of ANE investigations opened: 0
- Number of high-weighted deficiencies cited: 3
- Number of medium-high-weighted deficiencies cited: 2
- Number of medium-weighted deficiencies cited: 3

The Settlement Home Club

- Number of ANE investigations opened: 18
- Number of high-weighted deficiencies cited: 1
- Number of medium-high-weighted deficiencies cited: 13
- Number of medium-weighted deficiencies cited: 3

COURT'S EXHIBIT 4

OPERATIONS THAT COMPLETED HEIGHTENED MONITORING AS OF 3/1/2023

Archangel Foster & Adoption Services Child Placement Agency

- Number of ANE investigations opened: 2
- Number of high-weighted deficiencies cited: 0
- Number of medium-high-weighted deficiencies cited: 1
- Number of medium-weighted deficiencies cited: 0

Ascension Child and Family Services

- Number of ANE investigations opened: 14
- Number of high-weighted deficiencies cited: 3
- Number of medium-high-weighted deficiencies cited: 2
- Number of medium-weighted deficiencies cited: 2

Assuring Love Child Placement

- Number of ANE investigations opened: 10
- Number of high-weighted deficiencies cited: 0
- Number of medium-high-weighted deficiencies cited: 0
- Number of medium-weighted deficiencies cited: 0

- Assuring Love Child Placement had six open investigations at the time it transitioned to post-plan monitoring. None of these resulted in a substantiated finding.

Azleway Valley View

- Number of ANE investigations opened: 7
- Number of high-weighted deficiencies cited: 0
- Number of medium-high-weighted deficiencies cited: 0
- Number of medium-weighted deficiencies cited: 1

Bridge Emergency Shelter

- Number of ANE investigations opened: 0
- Number of high-weighted deficiencies cited: 0
- Number of medium-high-weighted deficiencies cited: 1
- Number of medium-weighted deficiencies cited: 0

Caregivers Youth & Transitional Living Services

- Number of ANE investigations opened: 17
- Number of high-weighted deficiencies cited: 1
- Number of medium-high-weighted deficiencies cited: 2
- Number of medium-weighted deficiencies cited: 0

Connections

- Number of ANE investigations opened: 14
- Number of high-weighted deficiencies cited: 0
- Number of medium-high-weighted deficiencies cited: 0
- Number of medium-weighted deficiencies cited: 1

Connections Individual & Family Services, Inc.

- Number of ANE investigations opened: 1
- Number of high-weighted deficiencies cited: 0
- Number of medium-high-weighted deficiencies cited: 1
- Number of medium-weighted deficiencies cited: 2

Embracing Destiny Foundation RTC

- Number of ANE investigations opened: 2
- Number of high-weighted deficiencies cited: 0
- Number of medium-high-weighted deficiencies cited: 0
- Number of medium-weighted deficiencies cited: 0

Family Link Treatment Services, Inc.

- Number of ANE investigations opened: 9
- Number of high-weighted deficiencies cited: 0
- Number of medium-high-weighted deficiencies cited: 0
- Number of medium-weighted deficiencies cited: 0

Harmony Family Services, Inc. Emergency Shelter

- Number of ANE investigations opened: 0
- Number of high-weighted deficiencies cited: 0
- Number of medium-high-weighted deficiencies cited: 1
- Number of medium-weighted deficiencies cited: 0

Heart to Heart Family Services

- Number of ANE investigations opened: 7
- Number of high-weighted deficiencies cited: 1
- Number of medium-high-weighted deficiencies cited: 0
- Number of medium-weighted deficiencies cited: 1

House of Shiloh Family Services

- Number of ANE investigations opened: 4
- Number of high-weighted deficiencies cited: 2
- Number of medium-high-weighted deficiencies cited: 0
- Number of medium-weighted deficiencies cited: 0

Lighthouse Family Network

- Number of ANE investigations opened: 4
- Number of high-weighted deficiencies cited: 2
- Number of medium-high-weighted deficiencies cited: 1
- Number of medium-weighted deficiencies cited: 1

Mission Road Developmental Center

- Number of ANE investigations opened: 3
- Number of high-weighted deficiencies cited: 0
- Number of medium-high-weighted deficiencies cited: 0
- Number of medium-weighted deficiencies cited: 0
- Mission Road Developmental Center had three open investigations at the time it transitioned to post-plan monitoring. None of these resulted in a substantiated finding.

New Horizons Child Placement Agency

- Number of ANE investigations opened: 7
- Number of high-weighted deficiencies cited: 0
- Number of medium-high-weighted deficiencies cited: 0
- Number of medium-weighted deficiencies cited: 0

Nothing Just Happens, Inc.

- Number of ANE investigations opened: 2
- Number of high-weighted deficiencies cited: 0
- Number of medium-high-weighted deficiencies cited: 1
- Number of medium-weighted deficiencies cited: 0

Pathways Youth & Family Services, Inc. dba Habilitative Homes

- Number of ANE investigations opened: 0
- Number of high-weighted deficiencies cited: 0
- Number of medium-high-weighted deficiencies cited: 0
- Number of medium-weighted deficiencies cited: 1

Pathways Youth Family Services—3H Youth Ranch

- Number of ANE investigations opened: 3
- Number of high-weighted deficiencies cited: 1
- Number of medium-high-weighted deficiencies cited: 1
- Number of medium-weighted deficiencies cited: 1

Renewed Strength Inc.

- Number of ANE investigations opened: 25
- Number of high-weighted deficiencies cited: 0
- Number of medium-high-weighted deficiencies cited: 1
- Number of medium-weighted deficiencies cited: 0

Road to Wisdom

- Number of ANE investigations opened: 12
- Number of high-weighted deficiencies cited: 0
- Number of medium-high-weighted deficiencies cited: 0
- Number of medium-weighted deficiencies cited: 0

Sunny Glen Children's Home

- Number of ANE investigations opened: 0
- Number of high-weighted deficiencies cited: 0
- Number of medium-high-weighted deficiencies cited: 1
- Number of medium-weighted deficiencies cited: 0

The Children's Home of Lubbock

- Number of ANE investigations opened: 16
- Number of high-weighted deficiencies cited: 0
- Number of medium-high-weighted deficiencies cited: 0
- Number of medium-weighted deficiencies cited: 1

Turning Point Child Social Services

- Number of ANE investigations opened: 12
- Number of high-weighted deficiencies cited: 0
- Number of medium-high-weighted deficiencies cited: 0
- Number of medium-weighted deficiencies cited: 2



To: Kevin & 9 more... >

COURT'S EXHIBIT 5

RE: Resend-FW: Request Joint Meeting with DFPS/ HHSC for Heightened Monitoring Discussion

Kevin and Deborah,

Regarding the documents we shared with you on May 15th, please note that DFPS and HHSC are planning to move forward with the use of these two documents by Friday, June 9, 2023. If you have any thoughts you would like to share in advance of that date, we welcome those.

Thank you.

Ora M. Chisom, MBA, PMP

COMMUNITY OF INTEREST PRIVILEGED COMMUNICATIONS

COURT'S EXHIBIT 6

Heightened Monitoring Compliance Considerations, Stage Progression, and Extension Framework

In the class-action foster care lawsuit, *M.D. et al v. Abbott*, a federal court has ordered the Health and Human Services Commission (HHSC) and the Texas Department of Family and Protective Services (DFPS) in Remedial Order 20¹ to “identify, track, and address concerns at facilities that show a pattern of contract or standard violations.” On March 18, 2020, the Court signed an order adopting definitions applicable to the Heightened Monitoring requirements of Remedial Order 20.

HHSC and DFPS are committed to ensuring child safety and share an ongoing commitment to compliance with all court orders, including Remedial Order 20. Below are details of the framework HHSC and DFPS have developed to implement and comply with the court’s order on Heightened Monitoring. The explanations include frequently asked questions and answers explaining how the agencies are administering HM in accordance with the applicable court-ordered requirements.

Heightened Monitoring Stages

1. What is a heightened monitoring (HM) episode?

A heightened monitoring (HM) episode consists of three stages and begins the day an operation is placed on HM. The episode ends the day the operation is removed from HM.

As illustrated in the CLASS system², the HM episode consists of three distinct stages, regardless of the duration of each stage:

- **Pre-plan Development Stage** – begins the date the operation is placed on HM and ends the date the operation receives its approved HM plan. An operation’s HM plan is based on the trends and patterns identified following a five-year retrospective analysis of an operation’s CCR licensing and RCC contract violations. The identification of trends and patterns, HM plan development, and the review of the HM plan with the provider are completed within 30 days of HM notification.

¹ As referenced in the Court’s Final Order entered on January 19, 2018, (D.E. 559), and the Court’s Order entered on November 20, 2018, (D.E. 606).

² The heightened monitoring plan, unannounced visits associated with the plan, and progress toward meeting the plan must all be documented in CLASS.

COMMUNITY OF INTEREST PRIVILEGED COMMUNICATIONS

- **Plan in Effect Stage** – begins the date the operation receives its HM plan and remains in effect until the operation is authorized to move to Post-plan Monitoring based on the operation meeting the following criteria:
 - ✓ the HM plan was in place for at least one year;
 - ✓ the operation has satisfied the conditions of its HM plan;
 - ✓ the operation is in compliance with the standards and contract requirements that led to HM (as demonstrated by at least six months' successive unannounced visits); and
 - ✓ the operation is not out of compliance with any medium-high or high (MH/H) weighted licensing standards.
- **Post-plan Monitoring (PPM) Stage** – begins the date the operation is released from the HM plan and ends the date the operation is removed from HM. During the PPM stage, HHSC and DFPS will coordinate to make at least three unannounced visits in the three months following the release from the plan, and intake data for the operation will be tracked for at least six months to ensure the operation does not lose progress made.

*Court Order Requirement #1: "the operation satisfies the conditions of the plan"***1. What is required of an operation to "satisfy the conditions of the plan"?**

The operation has satisfied the conditions of the HM plan when the operation has successfully implemented the requirements of all tasks, as assessed by DFPS and HHSC. The evaluation of the tasks (known as "testing") shows the operation is substantially meeting those requirements. Task testing is completed by CCR and RCC during HM unannounced visits. Each task requirement and method for testing is individualized, as necessary, to address an operation's identified trends and patterns. For example, if a task addressed compliance with foster home screening requirements, home screenings would be reviewed.

An evaluation is completed to assess whether an operation has satisfied the conditions and achieved substantial compliance with the tasks set forth in the HM plan once the operation has met six successive months of compliance with the standards and contracts requirements that led to HM (see Court Order Requirement #2, below) and the operation has been on HM for at least one year. Consideration of the following questions is part of that review:

- Has the operation implemented the requirements in the HM plan?

COMMUNITY OF INTEREST PRIVILEGED COMMUNICATIONS

- If the operation experienced delays with implementation, did the operation complete the HM tasks in a reasonable timeframe?
- If the operation faced challenges with consistent implementation of HM plan tasks, did the operation make overall progress and demonstrate that children are safe, risks are reduced, and that there is appropriate internal oversight of the operation?

Court Order Requirement #2: “at least six months’ successive unannounced visits indicate the operation is in compliance with the standards and contract requirements that led to heightened monitoring;”

1. How does the HM Team identify the “standards and contract requirements that led to HM”?

An operation’s eligibility for HM is initially determined by evaluating the number of violations (including minimum standards citations, violations of contract requirements, and confirmed findings of abuse and neglect)³ in the operation’s five-year retrospective analysis. These violations are then analyzed and organized into categories which are used to identify the patterns and trends representing the specific areas of concern that “led to heightened monitoring”.

2. How and when is a determination made of whether an operation is “in compliance” for the purposes of this court order requirement?

When an operation has been on HM for at least one year, an evaluation is conducted to determine whether the operation has substantially complied with the HM plan. This includes a review of whether the operation has achieved six successive months of compliance with minimum standards and contract requirements in the pattern/trend areas that led to HM.

Each violation the operation receives while on HM is evaluated to determine whether it falls under the pattern/trend areas. To demonstrate compliance for the purposes of this court order requirement, an operation must not be found to have any violations in pattern/trend areas for the duration of a period of six successive months.

3. Are violations identified during HM visits the only violations considered when determining an operation’s compliance for the purposes of this court order requirement?

No – Any and all violations identified by Child Care Regulation (CCR), Residential Child Care Contracts (RCC), and Single Source Continuum Contractors (SSCC) are considered.

³ Confirmed findings of abuse and neglect are counted per disposition per allegation.

COMMUNITY OF INTEREST PRIVILEGED COMMUNICATIONS

4. Is the activity start date⁴ or the activity closure date used to determine whether and when a violation is counted as evidence of non-compliance for the purposes of this court ordered requirement? (For example, if an investigation intake was received prior to the start of the HM episode, but the investigation closed with violations issued during the HM episode, is this counted as an instance of non-compliance?)

Violations the operation receives while on HM are reviewed to determine whether the activity start date associated with the violation occurred prior to the operation being identified for HM. All violations associated with activity start dates that fall within the HM episode are considered in the HM compliance evaluation.

If a minimum standard citation or contract violation in a pattern/trend area is received during the HM episode but is associated with an activity that began before the initiation of a HM episode, the violation is not considered in the HM compliance evaluation. This is because the violation is considered to be attributable to the concerning patterns and trends that “led to heightened monitoring” rather than evidence of the operation’s non-compliance during the HM episode.

If an operation receives a disposition of Reason to Believe (RTB) during the HM episode, regardless of the activity start date, assessment of the operation’s response and ability to mitigate future risk will be completed before determining whether the operation is eligible to move to post-plan monitoring or be released from HM.

5. Can new tasks be added to the HM plan after the start of the HM Episode, and does a new task impact the six months compliance period?

The HM plan can be amended to modify HM tasks or add new tasks. If it is determined the original strategy is ineffective in reducing trend and pattern violations, a determination will be made as to whether the modified or new task impacts the six-month compliance period based on the date the plan is amended and the type of trend in violations.

If the HM plan amendment is the result of a newly identified trend or pattern, the operation’s six-month compliance start date will start the day the new task is approved. However, if a current task is amended or a new task added to address an original trend or pattern, the operation’s six-month compliance period would not be affected.

6. What is the timeframe for when the six months of compliance begins and ends?

⁴ For this purpose, “activity start date” refers to an investigation intake date, inspection date, citation by assessment date, and/or the date a contract violation was assigned.

COMMUNITY OF INTEREST PRIVILEGED COMMUNICATIONS

The six-month compliance period begins once all HM tasks have been submitted by the operation and approved by DFPS and HHSC. The “end date” for the six months is determined by DFPS and HHSC. As explained (in Q#2) above, when an operation has been on HM for at least one year, the operation’s history is reviewed to determine whether, following the approval of all task submissions, there has been a period of six successive months of compliance with minimum standards and contract requirements in the pattern/trend areas that led to HM.

7. **What happens if there is a period of “six successive months” without the operation receiving any violations and then the operation receives a violation in a pattern/trend area before moving to post-plan monitoring?**

As stated above, all violations an operation receives while on HM are reviewed and the activity start date associated with a violation to determine whether/when the violation is counted as evidence of non-compliance is considered. This means that violations resulting from an investigation are considered non-compliance on the date the investigation is initiated rather than the date the violation was issued. In the scenario described, an operation may still be eligible to move to the post-plan monitoring phase as long as the investigation associated with the violation was initiated after the necessary six-month compliance period. Beyond the six-month requirement, the scope, severity and number of any violations received in pattern/trend areas are considered as part of the determination of whether it is appropriate for an operation to advance to PPM.

Court Order Requirement #3: “the operation is not out of compliance on any medium-high or high weighted licensing standards.”

1. **What will the HM team consider when determining whether an operation is “not out of compliance” for the purposes of this court ordered requirement?**

An operation will be considered “not out of compliance” for the purposes of this court-ordered requirement if the operation corrects, or comes into compliance with, any licensing standard violations weighted MH/H received while on HM. This court order requirement is construed by the agencies as applying to all licensing standards weighted medium-high or high regardless of whether the standard is in an identified pattern/trend category for that operation.

2. **Can an operation receive a medium-high or high weighted minimum standards violation while on HM and still move to post-plan monitoring?**

Yes, the operation may still be eligible to move to post-plan monitoring as long as the operation first comes into compliance with any MH/H weighted minimum standard

COMMUNITY OF INTEREST PRIVILEGED COMMUNICATIONS

violations received while on HM and they have already demonstrated six successive months of compliance as explained by Court Order Requirement #2.

3. If an administrative review (AR) has been requested for a minimum standards violation and is pending, must the AR be complete before an operation is considered compliant with the violation?

No, it is not required that an AR be completed before an operation is considered compliant. In fact, the operation must come into compliance with all violations in pattern/trend areas that led to HM and for all MH/H weighted deficiencies while AR is pending.

Heightened Monitoring Plan Extensions and Moving to Post-Plan Monitoring

In order for an operation to move to the post-plan monitoring phase, the operation must:

- Be on the HM plan at least one year;
- Satisfy the conditions of the HM plan;
- Maintain compliance with the minimum standards and contract requirements that led to HM for a period of six successive months;
- Not be out of compliance with any MH/H weighted licensing standards.

Once an operation has been on the HM plan for one year, an evaluation must be conducted to determine if all other criteria have been met for the operation to move to the post-plan monitoring phase. If all criteria are not met, DFPS and/or HHSC will assess a penalty/penalties and, as appropriate, extend the HM plan.

Penalties

- Suspension of Placements – DFPS Action
- Imposition of Fines – HHSC Action

If determined an operation does not meet the criteria for graduation to PPM, the CCR HM will issue a violation by Assessment for §749.635(2) or §748.535(2), as applicable, which requires the operation's licensed administrator to ensure that the operation complies with current HM plan(s). An administrative penalty will be assessed as a result of this violation, in accordance with the Texas Human Resources Code Sec. 42.078.

- Suspension or revocation of the Facility's or CPA's license – HHSC Action

COMMUNITY OF INTEREST PRIVILEGED COMMUNICATIONS

In accordance with the Texas Administrative Code Rule 745.8607, the frequency and severity of noncompliance, the degree or immediacy of danger or threat to the health and safety of children, and/or any aggravating or mitigating factors will be assessed to determine whether a suspension or revocation is most appropriate.

- Termination of Contract – DFPS Action

Extension Reasons

In conjunction with required penalties, an operation's HM plan may be extended beyond one year for the following reasons:

- The operation is not in compliance with the terms of its HM plan.
- The operation has not maintained six months of successive compliance with the minimum standards and contract requirements that led to heightened monitoring. The operation cannot be the subject of any investigations during the six-month compliance period that result in an RTB or violations related to the pattern/trend categories on the HM plan.
- The operation is not in compliance with MH/H weighted minimum standards. MH/H weighted deficiencies must be in "compliance met" status in CLASS.
- If an operation receives an RTB finding, the operation must be responsive and act quickly to address the incident resulting in the RTB and demonstrate the ability to mitigate future risk. The operation's HM plan may be extended to allow time to evaluate whether the operation has implemented processes to mitigate any identified risk.

Extension Timeframes

An extension during the Plan in Effect stage will typically be granted for a twelve-month period as long as the operation continues to engage in the HM process, is actively working to resolve the patterns and trends that led to HM, and there is no immediate threat to child safety. The extension timeframe assigned will be designed to allow for:

- an operation to satisfy the conditions of the HM plan,
- an operation to achieve six successive months of compliance with the licensing standards and contract provisions relevant to the violations that led to HM, and/or
- an operation to come into compliance with any MH/H weighted licensing standards and contract provisions.

If the operation receives an RTB finding for abuse/neglect during the Plan in Effect stage the operation's response and ability to mitigate future risk will be assessed before deciding to move the operation to PPM. Authorization for an operation to move to PPM can occur when the operation meets the eligibility criteria. This may occur at any point during the extension period.

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If an RTB for abuse/neglect occurs during the PPM stage, the PPM stage may be continued for a three-month period. An assessment of the operation's response and ability to mitigate future risk will be completed before allowing the operation to exit HM. This may occur at any point during the three-month extension period.

Operations that have Open Investigations at the time they would otherwise meet the Criteria for Advancement to PPM or Release from HM

Previously, HHSC and DFPS have not permitted an operation to move to Post Plan Monitoring (PPM) or be released from the HM episode when the operation has an open investigation. This was to ensure an operation was not prematurely released from HM or moved to PPM with an open investigation that could result in violation(s) related to a pattern/trend category or MH/H weighted minimum standard(s), including an RTB. An assessment procedure has been developed to review all open investigations involving operations on HM that otherwise meet the specific criteria to move to PPM or be released from HM. The assessment is intended as a child-safety measure to ensure DFPS and HHSC do not reduce HM oversight at a time when available information about an open investigation suggests oversight reduction is not appropriate due to serious child safety concerns.

The assessment includes a review and consideration of the following to evaluate risk associated with any open investigations:

- Is the documented evidence sufficient to conclude there is no serious risk?
- Is the documented evidence likely to support a violation under minimum standard or other regulatory law or a contract violation? If so, what is the scope and severity of each possible violation?

Once the investigation assessments are complete, the findings are discussed, and a determination is made as to whether it is appropriate for the operation to move to the next stage of HM. If the determination is made that sufficient information is available about the open investigation(s) to find that there does not appear to be an unreasonable risk of serious harm associated with the placement of children at the operation, the operation may be authorized to move forward to the next phase of HM (either PPM or release from HM episode). The determination must be agreed upon unanimously in order for an operation to move forward while investigations remain open. If there is no unanimous agreement that sufficient information is available to make the determination, the decision may be revisited when additional information about the investigation becomes available, regardless of whether the investigation(s) remain open.

The investigation assessment and the result of the assessment will be documented in an HM FITS note in CLASS.

COURT'S EXHIBIT 7

Figure 80: Information Included in Heightened Monitoring Placement Request for Approved Placements of PMC Children at Heightened Monitoring Operations, Calendar Year 2022

Source: PMC placement data, Placement authorization requests

n = 1,402

